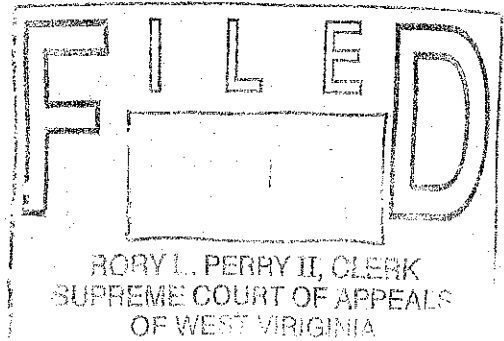


Mr. Rory L. Perry, III, Clerk
State Supreme Court Of Appeals
West Virginia State Capitol, Room E-317
190 Kanawha Boulevard, East.
Charleston, W.Va. 2535



Finley v. Ferguson, Judge.

33318

Dear Clerk Perry;

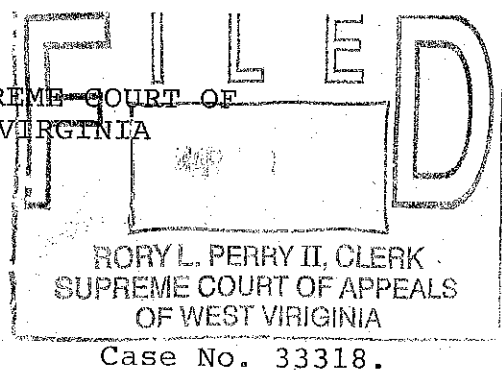
Please find enclosed is my petition for Petitioner's Legal Brief For Oral Argument that is set for Tuesday May 22, 2007, at 010:00 hours herein this Court. You will find the original and a copy, due to my financial funds I can;t send anymore copies , nor could I send Judge Ferguson his copy of it.

Please be as so kind as to contact me when it has arrived and when it was filed for my Oral Argument Hearing. Thank you for your time and assistance in this matter.

Oscar L. Finley
Oscar L. Finley

Oscar L Finley

IN THE WEST VIRGINIA STATE SUPREME COURT OF
APPEALS, CHARLESTON, WEST VIRGINIA



Oscar L. Finley,
Petitioner
V.

Hon. Alfred E. Ferguson, Judge of
Cabell County,
Respondent.

PETITIONERS LEGAL BRIEF FOR ORAL ARGUMENT

Come's Now Oscar L. Finley, by pro-se in the above style action and in accordance to this Honorables court Order, dated February 15, 2007, and presents the following.

Petitioner incorporates by reference his original hand written Writ Of Mandamus and the facts and issues presented therein.

Issuse presented, does the petitioner have a constitutional right to to have his Post Habeas Corpus Petition, styled, Finley v. McBride, case no. 01-C-817, heard in a timely matter?

Petitioner filed his Post Habeas Corpus Petition on September 30th, 2001, and to this date the court has not ruled on any of the petitioner's four(4) motions that was sent with petitioner's Post Habeas Corpus. Which are 1. Appointment of Counsel, 2. Motion to afford him in forma pauperis, 3. Motion for Omnibus Post Conviction Habeas Corpus Evidentiary Hearing, \$. Motion For Discovery. Nor has the court made an attempt to cat upon petition:

Memorandum of Law, This court has previously ruled and held in, State ex rel. Kucera v. City of Wheeling, 153 W.Va. 538, 170

S.E. 2d. 367 (1969), :a writ of mandamus will not issues unless three elements coexist- (1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of the respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy.

The court ruled "Obviously, persons who are inprisoned do not lose their constitutional right to use the courts to seek or obtain justice." The Court further stated, An implied right of action may arise from the language of this section providing that "[t]he courts of this state shall be open, and every person, for an injury done to him, in his person, property or reputation, shall have remedy to due course of law." Hurly v. Allied Chem. Corp.; 164 W.Va. 268,262, S.E2d 757 (1980). West Virginia Constitution Art III, section 17, further holds The courts of this state shall be open, and every person, for an injury done to him , in his person property or reputation, shall have remedy by due course of law; and justice shall be administered without sale, denial or delay.

Petitioner has met the requirements set forth in State ex rel. Kucera v. City of Wheeling, supra, i.e., (1) a clear legal right; ... Petitioner has a clear right to due process of law to Post Habeas Corpus relief in accordance to Rule 3 (a)(1) WV Code 53-4A-1, as he is incarcerated at Mt. Olive Correctional Complex. The issues presented in the Petitioner's Post Habeas Corpus Petition, before the Circuit Court of Cabell County is supported by clearly established laws handed down by West Virginia State Supreme Court, Statutory Law, i.e., West Virginia Code, and

other decisions by various Courts Wolff v. McDonnell, 31 L.Ed 2d 263 (1972) Russell v. Oliver, 552 F.2d 115 (4th.cir. 1977), Gilespe v. Kendrick, 265 S.E 2d 537 (w. Va. 1980) Cooper v. Gwinn, 289 S.E. 2d 781 (w. Va. 1981) Woodring v. Whyte, 45 S.E. 2d 238 (1978) Rhodes v. Chapman, 69 L.ed 2d (1981).

(2) a legal duty on the part of the respondent, ... Applying the Post Haeas Corpus Rules, 4(b) Initial review; appointment of counsel to file amended petition; Petitioner has sought appointment of counsel, and the Honorable Judge Alfred E. Ferguson, does have the duty to review the Habeas in a timely manner. Gibson v. West Virginia Department of Highways, 185 W.Va. 214, 46 S.E.2d 44 (1991), this Court observed as follows:

There is a presumption of constitutionlity with regard to legislation however, when legislation enactment either substantially impairs vested rights or severely limits existing remedies permitting court adjudication of cases, then the certain remedy provision of Article 111 Section 17 of the West Virginia is implicated. W.Va. Const. Art. 111, sec. 17 ("The courts of this state shall be open, and every person, for an injury done or reputation, person, property shall have remedy due course of law; and juctice shall be administered without sale, denial or delay."

3) The absence of another adequate remedy," Petitioner is incarcerated and has no other avenue for relief. Petitioner's habeas corpus was filed over five(5) years ago and the respondent has not been served, and such delay has , and will continue to cause damage to the Petitioner, to obtain other discoverable evidence.

WHEREFORE RELIEF SOUGHT

1) Petitioner seeks an ORDER to have his Habeas properly served without delay.

2) Petitioner seeks an Order to request Judge Alfred E. Ferguson, Respondent herein step down from Petitioner's case, due to his obvious conflict of interest he has impartial in actions,

3) Petitioner seeks an Order of appointment of counsel in the above style, with a ruling on all four (4) Motions that is or which is sitting in Cabell County Circuit Court.

Respectfully submitted on this 20th day of March 27.

VERIFICATION

Comes Now the petitioner, Oscar L. Finley, in pro-se and states that the facts and information contained within this petition on Petitioner;s Legal Brief For Oral Arguments are true and correct to the best of his knowledge and has been offered by him in good faith to the best of his layman ability.

Oscar L. Finley
Oscar L. Finley, Pro-es

Taken and subscribed before the undersigned authority on this 20 day of March 27.

Sheila Hosey

NOTARY PUBLIC

My Commission expires,

Dec. 24, 2016

